

**BENCH & BAR LIAISON COMMITTEE (CITIZENSHIP, IMMIGRATION & REFUGEE LAW)**

Toronto, ON

Wednesday, November 28, 2018

MINUTES**Attendance**

Court / Registry: Justice Diner (Chair), Justice Zinn, Justice McDonald, Holly Hargreaves, Mannu Chowdhury; Teleconference: Chief Justice Crampton, Justice St-Louis, Justice Boswell, Justice Brown, Justice Roussel, Andrew Baumberg, Patrick O'Neil, Natalie Fong, Caileigh Gruner, Michelle Hayman.
DOJ: Deborah Drukarsh, Diane Dagenais, Claire le Riche, Lori Hendricks; Daniel Latulippe and Sandra Weafer by phone.

CBA: Chantal Desloges and Erin Roth by phone

AQAADI: Nilufar Sadeghi by phone

RLA: Jack Martin and Raoul Boulakia.

CARL: Anthony Navaneelan; Mitchell Goldberg by phone,

Others: Mario Bellissimo, M. Max Chaudhary (OBA), Adrienne Smith, and Michael Battista.

1. Welcome / Approval of minutes of June 4, 2018 meeting
Minutes approved.

The Chief Justice provided a brief update:

- Associate Chief Justice – the recent budget created an ACJ position, to be hopefully filled soon.
- Prothonotaries – Prothonotary Molgat was recently appointed, providing 3 prothonotaries in Ottawa. A 3rd prothonotary is expected to be appointed soon in Toronto.
- Judges – there are now 2 Qc vacancies and 1 Ontario vacancy as a result of supernumerary elections.
- Hearing time – some complex cases are still being scheduled for 90 minutes for the hearing on the merits, even though much more time is needed. Counsel need to identify these cases and the required hearing length. At the present time, counsel and parties for subsequent cases sometimes need to wait for the earlier hearing to finish.
- Scheduling – cases are being scheduled within 90 days across the country, in part due to the settlement pilot (initial 30-day delay due to production Orders issued for Toronto hearings).
- E-Court – electronic hearing room equipment is being installed in courtrooms across the country.
- Website – work is under way on a major redesign, which will be more user friendly.
- Settlements – the Court is still seeing a large number of last-minute settlements. Counsel are urged to focus on the potential for settlement much earlier than is currently the case.

2. Business Arising from Previous Meetings

- (i) Feedback on [Practice Guidelines for Citizenship, Immigration, and Refugee Law Proceedings](#)

Chantal Desloges: comments from CBA lawyers were generally positive; no complaints.

Raoul Boulakia: positive feedback within RLA.

Claire le Riche: one big change relates to the process for certified questions.

- (ii) Feedback on amended [Notice](#) (regarding scheduling) re: IAD hearings

Erin Roth: the amendment is appreciated by the Bar.

- (iii) Feedback on Toronto pilot projects

- a) [Settlement](#)

Claire le Riche noted that the project is still at an early stage, so there is little to report.

Mario Bellissimo asked how to initiate settlement discussions with DOJ.
Claire le Riche suggested that preferably, requests should be made in writing.

b) [E-Process](#)

Justice Diner: the Court has yet to see uptake from the Bar.

Jack Martin: people are interested, and there will be take-up. This was circulated to the RLA listserve.

One complaint from members: *personal* service is still required for the originating Notice.

Deborah Drukarsh: the DOJ address will appear in the E-service Consent Form; a working email inbox is now being monitored.

DOJ intends to consent to every request that meets the parameters of the pilot.

For motions, DOJ cannot accept after hours service of documents. The email inbox is monitored during business hours. Individual lawyers' email inboxes have not worked in the past for service of documents – they get blocked by the filter, because they are usually too large.

DOJ is exploring other options for e-service

Anthony Navaneelan: CARL lawyers have requested this type of pilot, so he is not sure why the numbers are low. He will follow-up with members.

Chantal Deslozes: CBA has a similar position as CARL.

(iv) Update: Legal Aid

Raoul Boulakia: status quo in Ontario – no new legal aid spending.

Nilufar Nilufar Sadeghi: similar situation in Quebec – no changes.

Erin Roth: out West, there is an alliance of legal aid lawyers, and increased lobbying regarding legal aid.

(v) Update: Subcommittee for Assistance of Unrepresented Litigants

Michael Battista provided background from the last meeting regarding creation of the sub-committee.

Its work will be to explore a range of options in support of litigants who have been refused legal aid, including resources on the Court web site, pro bono lawyers, and other initiatives.

For now, the sub-committee simply seeks formal endorsement of its terms of reference, and will then begin its work. It has a conference call scheduled for December 7.

Justice Diner: are there any comments / objections regarding the terms of reference?

No comments. Approved

The Chief Justice noted the Court's initiative a few years ago to develop list of pro bono and legal aid counsel for access at the Court's Registry counters across the country.

Action: Andrew Baumberg to provide the list to the Subcommittee for Assistance of Unrepresented Litigants.

Nilufar Sadeghi: AQAADI is interested in joining sub-ct .

Action: Nilufar Sadeghi to advise Michael Battista of AQAADI's representative on the Subcommittee for Assistance of Unrepresented Litigants.

(vi) Ghost representative working group

Justice Diner noted the wider issue regarding non-lawyers assisting parties for a fee. There was some preliminary input on the issue from a new working group during a call yesterday, including BJ Caruso, Richard Kurland, and Jack Martin.

Andrew Baumberg provided background on the Rules Committee amendment, initially proposed by the private bar to try to get some information on the record regarding non-lawyers who assist parties. This was published in part I of the Canada Gazette, with some feedback questioning the underlying goal as well as the expected use of the information once on the court record.

Justice Diner noted feedback from Richard Kurland regarding recent patterns found in groups of files submitted by self-represented litigants.

Mario Bellissimo: a Report was prepared some 5-6 years ago on 1000 files; they found about 100 ghost representatives. There is good data in this for use by the working group.

Deborah Drukarsh: there are many, many files that fit this profile; DOJ should be an observer on the working group, as DOJ sees *every* file; also, the working group needs to consider the new web tools etc. being developed by the Court and / or the Subcommittee for Assistance of Unrepresented Litigants, as these new resources may also be used by consultants acting for a fee.

Daniel Latulippe agrees with Deborah Drukarsh's comments; a few years ago, he received about 25 files that were all by self-represented litigants but all using same mailing address.

Sandra Weafer: same issue in Vancouver.

Action: DOJ to be added (D. Drukarsh lead) on WG.

(vii) Feedback on additional changes to leave granted Order

a) Amendment of procedural schedule on consent

No comments.

b) Further memorandum of fact and law

Claire le Riche: some Orders do not indicate that the further memorandum replaces the Applicant's Reply memorandum.

Andrew Baumberg noted that the revised language of the leave Order template addresses replies by the Applicant, and read the following sample language:

8. The applicant's further memorandum of argument, if any, shall replace the applicant's memorandum of argument filed pursuant to Rule 10 and reply memorandum, if any, filed pursuant to Rule 13, and shall be served and filed on or before March 17, 2015.
9. The respondent's further memorandum of argument, if any, shall replace the respondent's memorandum, if any, filed pursuant to Rule 11, and shall be served and filed on or before March 27, 2015.

Action: Andrew Baumberg to check that this language is actually part of the current template.

Raoul Boulakia: in some cases, it is difficult to address all the issues in 30 pages.

Justice Diner: in some cases, certain counsel take advantage to include many extra pages of legal argument.

Justice Brown – if you don't replace the earlier memorandum, then the judge needs to read both, with some overlap, meaning the judge must sometimes read close to 60 pages of argument, rather than 30 or 35.

Justice Zinn: in some cases, the further memorandum opens by indicating that the party continues to rely on its original memorandum, but then goes on for further extensive argument. He would like it clarified that if there is a further memo, then the judge should not need to look at the first memorandum.

Justice Diner: these are not like an amended statement of claim, with mark-ups; there is no easy way to compare the two documents to see what has been amended.

Raoul Boulakia agrees with proposal in general, but in some cases there are replies that require extra pages.

Justice Diner: there is a process to allow a party to request additional pages.

Anthony Navaneelan : there is an access to justice issue here regarding legal aid and also for private counsel; if there is only a single new issue, it is very time-consuming and therefore expensive to re-draft / file the full memorandum.

Justice Diner: Anthony Navaneelan's point is well-taken; we may need to review this on that basis. If members of the bar are encountering problems with legal aid constraints, please let the Court know.

Mario Bellissimo: ATIPs are often not available at the leave stage, and sometimes a further affidavit is needed. Is there an expectation that a new affidavit will be filed?

Deborah Drukarsh: perhaps allow extra pages (up to 40?) based on original with underlined changes. Also, in the further memorandum, it would be preferable to have all citations made to the certified tribunal record (CTR) rather than the earlier perfected application record.

Daniel Latulippe tends to italicize new arguments in his further memorandum.

Chief Justice: agrees with Justice Diner that if parties can keep within the 30-page limit in very complex proceedings in other areas, and other courts (including the Supreme Court), then it should be possible to find a way to do the same here.

Jack Martin: regarding Deborah Drukarsh's comment that all references should be to the CTR, if only one or two references are made to the CTR, whereas all other references are to Application record, it is excessive to re-do all the references.

Justice Diner: for review, possibly to consider an option similar to that proposed by Daniel Latulippe. We will standardize the language nationally.

3. New Items for Discussion

(i) Certified Questions (CQ) – Feedback on [List](#)

Justice Diner referred to the new Practice Guideline regarding timing of submissions, as well as to recent appeal decisions that establish the proper criteria for certification.

Andrew Baumberg provided background on the timing of updates, which for a few years now are normally completed within a week of the certified question being issued. He invited input regarding the structure / content of the list.

The Chief Justice noted the significant drop in number of CQ's.

Claire le Riche: the list is very user friendly / useful.

Action: Justice Diner to get Law Society lists of recent CQ jurisprudence for distribution.

(ii) Removals – announcement and fallout

Claire le Riche: the client is increasing removals, and there has been an increase in stay motions.

There is public knowledge of the government's plan to increase removals up to 10k / year.

Anthony Navaneelan has seen a notable increase in call-ups. The wave of cases is certainly coming.

Chief Justice: we need several weeks of advanced notice so that Court can schedule additional IMM duty judges.

Claire le Riche: we can report back by end of year; CBSA has hired more removals officers, but they need to be trained. It would be difficult to reach 10K this calendar year.

Action: Claire le Riche to provide an update on projections for removals.

(iii) Timing – Notice to Report

Andrew Baumberg noted that this Summer, a member of the Court was told by CBSA counsel that it was common to serve Notices to Report a week or so before the intended removal date.

Claire le Riche spoke with a CBSA client – normally they aim for a 30 day notice.

Anthony Navaneelan: the timing is all over the map; if no criminality issue, normally it is 14 days; otherwise, in some cases, only 4-5 days.

Justice Diner: this is a long-standing issue; are there any recent changes or new announcements?

Claire le Riche: CBSA has hired people, but she is not aware of any policy framework. She added that sometimes the issue is due to a late motion by the Applicant, not only due to CBSA delay.

Sandra Weafer always encourages CBSA to provide sufficient time; she is not aware of any particular problem.

Daniel Latulippe typically sees 2-3 week advance notice; occasionally there is a short time-line, with no explanation, and he tries to address it as an officer of the court, as it is not acceptable.

4. Next Meetings

(i) Spring 2019

The CBA conference is in Winnipeg from May 30 to June 1, 2019. Date to be announced in writing.

(ii) Summer / Fall 2019

Justice Diner noted previous discussions regarding a possible Committee meeting in Montreal.

Nilufar Sadeghi noted that AQAADI could provide support for a Montreal meeting, if needed.